IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE SEVENTEENTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

**THE HON'BLE MR JUSTICE C.V.RAMULU**

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**WRIT PETITION NO : 24587 of 1998**

Between:

G.Ramesh Goud, S/o. G.Balayya, R/o. Nizamabad.

**..... PETITIONER**

AND

1 The Industrial Tribunal, Hyderabad-II, Rep By Its Presiding Officer, Chandra Vihar Buildings, M.J.Road, Hyderabad.
2 The Secretary, State Board of Technical Education & Traning, Boorgula Ramakrishna Rao Building, Hyderabad.

**.....RESPONDENTS**

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to call for the records from the 1st Respondent and issue an appropriate Writ, order or Direction, particularly one in the nature of WRIT OF CERTIORARI and quash the award passed by the 1st Respondent in I.D.NO.62/94 dated 06/02/1996, published on 18/06/1996 as illegal, unjust, contrary to law, contrary to the mandatory provisions of the Industrial Disputes Act and grant the relief of reinstatement with back wages and all other attendant benefits and grant all consequential benefits.

**Counsel for the Petitioner:MR.A.K.JAYAPRAKASH RAO**

**Counsel for the Respondent No.1: GP FOR LABOUR**

**Counsel for the Respondent No. 2 :Mr P.V.S.S.S.Rama Rao**

**The Court made the following :**

**ORDER:**

This writ petition is filed by the petitioner-workman being aggrieved by the award passed by the Industrial Tribunal-cum-Labour Court-II, Hyderabad in I.D.No.62 of 1994, dated
06-02-1996.

It is the case of the petitioner that he was appointed with effect from 04.01.1988 as 'Daily Wage Clerk' under the
2nd respondent. He is a graduate in Arts and passed Typewriting (English) Lower Grade and also undergone computer training in November 1990 and February 1991. In addition to that he also belongs to BC-B community. Therefore, he states that he is fully qualified to hold the post of Clerk. Further, while regularizing the services of the daily wage clerks, rules regarding reservation by roaster are to be followed strictly. However, the 2nd respondent ignored the reservation policy while appointing 18 employees besides ignoring the claim of the petitioner. Out of 18 employees, nine belong to O.C. Category and nine others belong to BC-A (2), BC-B (1), BC-D (4) and SC (1). Without considering the rule of reservation properly, the 2nd respondent issued G.O.Ms.No.193, GAD (Services-A), dated 14-03-1990, stating that all employees, who were appointed by direct recruitment to any category of post between 02-01-1986 and 01-08-1989 and continuing in service, shall be regularized without subjecting them to any test. The petitioner asserts that he is also eligible under the said G.O., for appointment to the post of Junior Assistant on regular basis and without properly filling up the vacancy fell into the category of BC-B group, the case of the petitioner was rejected and the same is arbitrary and illegal. Aggrieved by the same, the petitioner raised an industrial dispute before the Tribunal under

Section 10 (1) ( c ) of the Industrial Disputes Act, 1947.

Before the Industrial Tribunal, the workman examined himself as WW.1 and documents under Exs.W.1 to W.9 were marked. On behalf of the Management-Respondent No.2, MW.1 was examined and documents under Exs.M.1 to M.12 were marked.

After elaborate consideration of oral and documentary evidence available on record, the Tribunal came to the conclusion that the claim of the petitioner is not justified, and as such, dismissed the same. Aggrieved by the same, the present writ petition is filed.

A detailed counter affidavit has been filed by the 2nd respondent stating that earlier the petitioner filed W.P.Nos.7963 of 1991 and 454 of 1995 and that both the writ petitions were disposed of by a common order, dated 04-07-1991, with the following directions:

> "(i) that the action of the respondent in removing the petitioners from the illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India;
>
> ii. a direction may be issued to the respondent to follow the provisions of Industrial Disputes Act in continuing regularizing the petitioner's services;
>
> iii. direction may be given to the respondents to regularize the services of the petitioners from the date of appointment;
>
> iv. costs may be awarded to the petitioners; and pass such other order or orders appropriate in the circumstances of the case."

As per the directions of this Court in the above writ petitions, the respondent-Management has considered the claims of each and every individual and passed appropriate orders. While doing so, since the petitioner being the junior most in the cadre and was found to be surplus, his services were terminated with effect from 31-08-1991 while issuing a notice of retrenchment. The said notice was issued strictly in accordance with the guidelines laid down by this Court in the above said writ

petitions. Further, the 2nd respondent has not committed any error in filling up the vacancy against the BC-B quota. As per the seniority list, the candidate eligible under the BC-B community was identified and the said vacancy was filled up. The petitioner being the junior most in his cadre and was found to be surplus, his services were terminated with effect from 31-08-1991 while issuing a notice of retrenchment. Hence, the writ petition is devoid of merits and is liable to be dismissed.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and also looked into the award passed by the Tribunal and the other material available on record. In my considered opinion, the Tribunal has considered each and every aspect of the evidence meticulously and also took note of the judgment of this Court in W.P.No.454 of 1990 and batch, dated 04-07-1991. It is necessary to notice the findings of fact arrived at by the Tribunal, which read as follows:

> "It may be noted that 10 posts of Junior Assistants-cum-Typists in the scale of Rs.910-1625 having knowledge in Computer Operation were sanctioned. There is no doubt MW.1 has said that it is dated 19-09-1990 and the Board has purposefully not filed page No.3 of Ex.M.5. Now the directions of the Hon'ble High Court in the batch of writ petitions vide Ex.M.5 order has to be considered. Wherein his Lordship also disposed of writ petition in which the petitioner herein is also the petitioner i.e., W.P.No.454 of 1990. Obviously in that petition he has obtained the stay order. Of course it is not clear from Ex.M.5 but because this batch of writ petitions are disposed of by a common order of the Hon'ble High Court neither the petitioner has deposed nor the respondent that he was being dismissed in 1990 itself. But from the W.P.No.454 of 1990 it can be made out that he was being dismissed in 1990 and he had obtained the stay orders. Then the main writ petition was 7963 of 1991 wherein also the petitioner is at Sl.No.18. The Hon'ble High Court disposed of the writ on 4th July 1991 and while disposing of them the High Court observed that the Board will sympathetically consider the question of relaxation of exemption of required educational qualifications of some persons who have worked for more than 5 years or more. The provisional list prepared in Ex.M.6 wherein the name of Ramesh Goud is found at S.No.56 to which the petitioner filed objection dated 29-07-1991, Ex.W.1 wherein he has objected that his name in the seniority list is noted below Mr.S.Maheswar and to verify the same. Then Ex.M.2 is the order of objection of the petitioner dated August 1991stating that S.Maheswar and he are appointed on one and the same date i.e. 04-01-1988 and S.Maheswar is

born earlier, he is above senior to him. But any way they again prepared seniority list Ex.M.9 and he is placed at S.No.54 but below S.Maheswar. Now the simple question is that his objection to the seniority list was on the ground that he should be placed above S.Maheswar for which a proper reply is given and again there is no representation and that seniority seems to be final. The only objection of the petitioner seems to be that the qualifications that are prescribed are having knowledge in computer operation. According to him he has underwent computer training in February, 1991. No doubt the Board has not filed the resolution of the meeting held on 19-09-1990 i.e., resolution No.15-4/90 Item No.3 and it is also challenged by the respondent that the petitioner has not undergone the computer training, of course no certificates are filed by the petitioner to show that he has undergone computer training or that he has passed lower Typewriting but one thing is clear that the qualifications that are prescribed are having knowledge in computer operation and it is also admitted by M.W.1 that one Mr. Mallikarjuna Rao was appointed as Junior Assistant by promotion from record assistant and even some candidates have been appointed who have put in less than 240 days of service. But if that be so, it is for the other candidates who are senior to the petitioner to take objection and not for this candidate. The petitioner was working perhaps under a stay order since 1990 and he had not obtained the qualifications of computer training till February 1991 i.e., actually when he was working on the stay order. But as on the date when the resolution was passed on 19-09-1990 he was not having the requisite qualifications of computer operation. As seen from Ex.M.9 very few persons were having qualifications computer operation for eg. Sl.no.41, S.No.43, S.No.57 as on 1-1-1991 but the petitioner has also obtained the qualifications in February 1991 now whether they have relaxed the qualification of this computer operator training for all the candidates is not known but MW.1 says that in the Board meeting dated 19-09-1990 regarding qualification for appointment of Junior Assistants no decision was taken. So there is no doubt some irregularity and when no decision is taken persons with computer training and computer operation should have been given preference when it was included in the minimum qualification prescribed. But it can only be presumed that they have relaxed the same in view of the observations of the Hon'ble High Court. Practically all the candidates who are appointed barring some like Usha Rani who belongs to O.C. it is submitted that they had not put in 240 days of service but as per roaster system the objection should be raised by the O.C. candidate. This candidate belongs to B.C.'B' and he has not been able to show as to how the reservation to B.C. 'B' is not followed. That so many relaxations are given including age, degree, type writing qualification for M.Sumathi and for others also several relaxations are given. Only a few candidates are there where no relaxation is given. So obviously the management took into consideration the observations of the High Court as binding and gave appointments by relaxing age and other qualifications. But one thing is to be observed that this candidate is most fit candidate fulfilling all the qualifications. Hence, of course no relief can be given now in this I.D. but still as per the resolution dated 15-

3-A/90 held on 1990 item No.3 perhaps he is working as a Daily wage worker and he is so working for any future vacancies he shall be considered along with other candidates having qualification of computer operation and he should be given preference depending on his number of years of service he has put in as a daily wage worker i.e., to say his seniority should be considered."

From the above, it is clear that all the candidates, who are appointed barring some like Usha Rani, and belong to O.C. community, had not put in 240 days of service but as per roaster system the objection has to be raised by the O.C. candidate only. The petitioner belongs to BC-B and it is for him to show as to how the rule of reservation to BC-B community is not followed. Though many relaxations were granted to the candidates, they could not come up for selection. However, it is found that the petitioner has fulfilled all the qualifications. Therefore, though no relief was granted in the I.D., at that stage, it was observed that his case may be considered for any future vacancies along with other candidates having qualification of computer operation together with his seniority. Therefore, he is not entitled for any relief at this stage, and the findings of the Tribunal cannot be said to be either illegal or arbitrary calling interference of this Court under Article 226 of the Constitution of India. The writ petition is devoid of merits and the same is liable to be dismissed.

Accordingly the writ petition is dismissed without any order as to costs.

17-06-2005

*GJ*

To

1. The Presiding Officer, Industrial Tribunal, Hyderabad-II, Chandra Vihar Buildings, M.J.Road, Hyderabad.
2 The Secretary, State Board of Technical Education & Traning, Boorgula Ramakrishna Rao Building, Hyderabad.

3. Two C.Cs. to the Government Pleader for Labour, High Court of A.P., Hyderabad. (O.U.T.)

4. Two C.D. copies.